



December 13, 2001

Ms. Tina Plummer
Open Records Coordinator
Texas Department of Mental Health and Mental Retardation
P.O. Box 12668
Austin, Texas 78711-2668

OR2001-5819

Dear Ms. Plummer:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 156117.

The Texas Department of Mental Health and Mental Retardation (the "department") received a request for information relating to an investigation. You claim that the requested information is excepted from disclosure under section 552.101 of the Government Code.¹ We have considered the exception you raise and have reviewed the information you submitted.

We first note that the requested information is subject to section 552.022 of the Government Code. Section 552.022 provides that

the following categories of information are public information and not excepted from required disclosure under this chapter unless they are expressly confidential under other law:

(1) a completed report, audit, evaluation, or investigation made of, for, or by a governmental body, except as provided by Section 552.108[.]

Gov't Code § 552.022(a)(1). You indicate that the requested information relates to a completed investigation by the Texas Department of Protective and Regulatory Services ("DPRS"). Therefore, the department must release this information under section 552.022(a)(1), unless it is excepted from disclosure under section 552.108 or expressly confidential under other law.

¹As we are able to make a determination under section 552.101, we do not address your other arguments against disclosure.

Section 552.101 of the Government Code excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” This exception protects information that another statute makes confidential. Chapter 48 of the Human Resources Code governs investigations and protective services for elderly and disabled persons. Section 48.101 provides in relevant part:

(a) The following information is confidential and not subject to disclosure under Chapter 552, Government Code:

- (1) a report of abuse, neglect, or exploitation made under this chapter;
- (2) the identity of the person making the report; and
- (3) except as provided by this section, all files, reports, records, communications, and working papers used or developed in an investigation made under this chapter or in providing services as a result of an investigation.

(b) Confidential information may be disclosed only for a purpose consistent with this chapter and as provided by [DPRS] or investigating state agency rule and applicable federal law.

Hum. Res. Code § 48.101(a)-(b). You inform this office that the requested information concerns an allegation of abuse that was investigated by DPRS. Based on your representation and our review of the information at issue, we agree that this information consists of files, reports, records, communications, and working papers used or developed in an investigation made under chapter 48 of the Human Resources Code or in providing services as a result of an investigation. Therefore, this information is confidential under section 48.101 of the Human Resources Code and must be withheld from disclosure under section 552.101 of the Government Code as information made confidential by law.²

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov’t Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the

²We note that the requestor may have a right to obtain information held by the Department of Protective and Regulatory Services that relates to this investigation. *See* Hum. Res. Code § 48.101(d).

full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

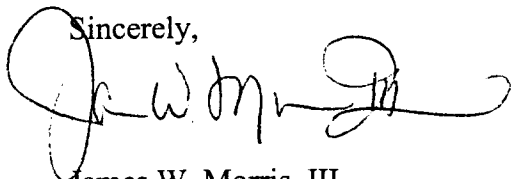
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Tex. Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read 'J W Morris III', with a large, stylized initial 'J' and a long, sweeping underline.

James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/sdk

Ref: ID# 156117

Enc: Submitted documents

c: Ms. Portia Watson
2110 East 12th Street
Austin, Texas 78702
(w/o enclosures)